

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 57 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
Nos. 1 to 5 No

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KHARVAD VISHRAM DAMJI

Versus

KHARVA BHANJI DAMJI

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Appearance:

MR CH VORA for Petitioner

NOTICE NOT RECD BACK for Respondent No. 1

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CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 20/08/98

ORAL JUDGEMENT

Notice for final hearing of this revision has been served on the plaintiff-respondent but he is absent. He has not engaged any Counsel. Shri C.H.Vora for the revisionist has been heard.

The present revision arises under the following facts and circumstances :

The revisionist is a defendant in the suit pending before the Trial Court. He moved two applications. One for summoning three witnesses as his witnesses for giving evidence in the suit on his behalf. The other application was for summoning certain documents. In other words, the other application was for production of documents. Both the applications were rejected by the Trial Court. The revisionist is not aggrieved from the order of the Trial Court rejecting application for production of documents. The revisionist is however aggrieved only from the order of the Trial Court rejecting his application for summoning three witnesses mentioned in the list annexed with the application.

It appears from the impugned order that the Court below has committed manifest error of jurisdiction in passing such order. If a Court rejects an application of a party for summoning witnesses it amounts to of case decided in as much as such party is prevented from adducing full evidence in support of his case.

The order suffers from jurisdictional error in as much as the order itself shows that it is a result of non application of mind by the Court below to the contents of the application on which such order was passed. The application shows that simple request was made that the three witnesses mentioned in the annexed list be summoned by the Court as defendant's witnesses. The record shows that the plaintiff's evidence was closed. The defendant entered his evidence. It seems that some witnesses were examined. Some more witnesses were proposed to be examined by the defendant. Instead of considering this request the Trial Court passed the impugned order presuming that it was an application for production of documents at a late stage. Irrelevant reasonings have been given in the impugned order which also shows that the Court below has failed to exercise jurisdiction vested in it by law. In any case, the jurisdiction has been improperly exercised by the Court below.

For the reasons stated above, the revision has to be allowed and is hereby allowed. The impugned order is set aside. The application of the revisionist for summoning three witnesses is allowed. The Trial Court shall summon these witnesses of the defendant. Thereafter, their evidence will be recorded and then the case shall be decided in accordance with law. No order as to costs.

Sd/-

(D.C.Srivastava, J.)

m.m.bhatt